**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL WRIT PETITION NO. 20 OF 2006**

Mr. Gerson Menezes,
House No.382 near old
Post Office, Caranzalem,
Panaji-Goa. ...Petitioner

versus

1. State of Goa,
   Through Police Incharge,
   Panaji Police Station,
   Panaji-Goa.

2. Miss Greeta Fernandes,
   C/o. Mr. Reginaldo Fernandes,
   Near old Post Office,
   Caranzalem, Panaji-Goa.

3. Miss Machada Cabral,
   C/o. Mrs. Rosy Cabral,
   Post Office, N.I.O.,
   Opp. State Bank of India,
   Dona Paula-Goa.

4. Mr. Benny Braganza,
   C/o. Mr. Alex Braganza,
   House No.251/2,
   Moloca Waddo,
   Merces, Tiswadi-Goa.

5. Mr. Ivo Braganza
   C/o. Mr. Alex Braganza,
   House No.251/2,
   Moloca Waddo,
   Merces, Tiswadi-Goa. ... Respondents

Mr. Rohit Bras de Sa, Advocate for the Petitioner.

Mr. C. A. Ferreira, Public Prosecutor for the State.

**CORAM : N. A. BRITTO, J.**

**DATE : 17TH AUGUST, 2006.**

**ORAL ORDER**

Heard Mr. Rohit Bras de Sa, the learned Counsel on behalf of the petitioner and Mr. C. A. Ferreira, the learned Public Prosecutor on behalf of the State.

2. The petitioner is the complainant in C.C.No.70/05/B. The petitioner's daughter by name Nadia, aged about 17 years, lost her precious life at a young age in an accident involving Activa Scooter bearing No.GA-07-A-6734. It appears that no case was registered because according to the Police it is the said Nadia who was driving the said scooter. As per the petitioner, it is A-2/Greeta Fernandes who was driving the said scooter. The petitioner therefore prosecuted the said Greeta as A-2, another pillion rider by name Machada Cabral as A-3, one Benny Braganza as A-4 and Ivo Braganza as A-5, and all under Sections 304-A of I.P.C. The learned J.M.F.C. by Order dated

3-2-2006 has refused to issue process against A-3/Machada Cabral, A-4/Benny Braganza and A-5/Ivo Braganza and has dismissed the complaint as against them. As far as A-2/Greeta Fernandes is concerned the learned J.M.F.C. has postponed the issue of process as against her and in the meantime has directed the Police Inspector, Panaji Town Police Station to investigate the matter and submit a report to the Court. It is informed that since then on or about 3-3-2006 the Panaji Town Police Station has submitted the report.

3. There is no dispute that an Order refusing to issue process against the accused is revisable. However, it is submitted that the Order of the learned J.M.F.C. is perverse and on that count the extraordinary jurisdiction of this Court is invoked both under Section 482 of the Code(Code of Criminal Procedure, 1973) and Article 227 of the Constitution of India. It is also submitted that although the learned J.M.F.C., as far as A-2/Greeta Fernandes is concerned had directed the P.I. to investigate into the matter, the said P.I. has not carried out any further investigation but has submitted the report dated 3-3-2006 with statements earlier recorded by the Police. As far

as this grievance is concerned, the complainant would be free to ventilate the same before the learned J.M.F.C. and the learned J.M.F.C. would be entitled to consider the same in accordance with law. As far as the issue of process against A-2/Greeta Fernandes is concerned, the same has not attained any finality at the stage of issuing the process or dismissing the complaint. Since the impugned Order is revisable, the petitioner has an ordinary remedy of revision. A revision can be entertained by the Court of Sessions as well as by this Court. As held by this Court in the case of **Dr. Mohan N. Bhawe** v. **Travel Force** (unreported decision dated 6-4-2005 in Criminal Miscellaneous Application No. 52/2005), in **V. K. Jain and others** (05(2) Bom.C.R.(Cri.) 738) as well as in the case of **Jeetendra R. Deshprabhu** v. **Laxmikant Yeshwant Parshekar and others** (unreported decision of this Court dated 23-12-2004 in Criminal Revision Application No.28/2004), it is the choice of the Superior Court whether a revision petition should be entertained by it or not by allowing a party to by-pass the inferior Court. It was also held that it is an unwritten law settled by propriety, practice and prudence that a party should ordinarily approach the Court of Sessions first, in revisional jurisdiction. The

question is not one of lack of jurisdiction of this Court but when it comes to exercising extraordinary jurisdiction whether under Section 482 of the Code or Article 227 of the Constitution of India the question is always one of self imposed limitation in that this Court will not exercise its extraordinary jurisdiction since ordinary remedy by way of revision is available to a party.

4. The petitioner is at liberty to approach the Court of Sessions in revision against the said Order dated 3-2-2006 of the learned J.M.F.C. in refusing to issue process against A-3 to A-5.

5. With the above observations, the petition is dismissed in limine.

**N. A. BRITTO, J.**

**RD**